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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1729

LODGES 743 AND 1746, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,
Petitioners,

v.

UNITED AIRCRAFT CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY TO BRIEF IN OPPOSITION

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Respondent's emphasis on the trial court's view that petitioner's legal theory is inconsistent and unreasonable (Opp. pp. 8, 13), actually assists in differentiating and illuminating the distinct questions of contract construction which the courts below confused. One question is: does Section 301 require treating as a "commitment" a representation which national labor policy

does not require or forbid the obligor to make? The second is: does Section 301 preclude enforcement of contractual limitations on striker reinstatement rights which violate national labor policy? The first question governs the refusal of the court below to treat as a "commitment" Burke's representation that the complements would be operating at normal size by approximately Labor Day (Pet. 5-7, 23-32). The second governs contractual limitation of strikers' reinstatement rights to four and a half months (157a; Petitioners' Reply to Briefs in Opposition in No. 75-1686, p. 4, n. 3 cont.[1]); denial to strikers of access to many "available" jobs and subordination of unrecalled strikers' seniority to junior inactive absentees and active employees in competition for admittedly "available" jobs (Pet. 35-44).

Proper answer to these very different questions necessitates recognition that, under *Lincoln Mills,* two sources of substantive law govern construction of strike settlement agreements. One is "accepted principles of traditional contract law". *Teamsters Union* v. *Lucas Flour Co.,* 369 U.S. 95, 105 (1962). The other is "the policy of our national labor laws." *Lincoln Mills,* 353 U.S. at 456. These sources, obviously, have different spheres of operation—the latter operates in areas governed by overriding considerations of national labor policy; the former in areas which are not. *NLRB* v. *Magnavox Co.,* 415 U.S. 322 (1974) affords an apt illustration. There, contractual limitation of the right to distribute organizational literature on behalf of the incumbent union was rejected as inconsistent with national labor policy. Of course, rejection of that contract limitation would not prevent enforce-

[1] As there shown, that limitation was imposed by the Company unilaterally, not "negotiated" (Opp. p. 14), as respondent would have it.

ment of the provision of the same contract giving the incumbent union access to plant bulletin boards (415 U.S. at 326, 331)—a benefit which national labor policy does not require or forbid the employer to grant. The same analysis applies to the various provisions of the strike settlement agreement in this case.

In the context of a strike settlement agreement, the relevant "constant" of national labor policy is Congress' "concern for the integrity of the strike weapon" (*Labor Board* v. *Erie Resistor Corp.*, 373 U.S. 221, 234 (1963), manifested by its guarantee of reinstatement rights to strikers who have not been permanently replaced or whose jobs have not been permanently abolished. *NLRB* v. *Fleetwood Trailer Co.*, 389 U.S. 375, 378 (1967). *Fleetwood* assumed that that guarantee did not go so far as to foreclose a defense based on "legitimate and substantial business justifications." The court below transformed that reservation into a source, indeed *the only* source, of construction of the Company's obligations, injecting that reservation into Burke's complement restoration representation (16a)—although nothing in national labor policy imposes such a limitation upon a *voluntary* commitment, and the infusion frustrates the reasonable expectation of the Union and the strikers. The Court thereby nullified *pacta sunt servanda* by importing a non-existent limitation from national labor policy.

On the other hand, while conceding that construction and enforcement must be guided by relevant labor law policy considerations (33a and n. 35, 104a-105a), the courts below failed to give effect to the policy which protects strikers against exclusion from the "available" category of jobs they are qualified to fill and protects them against subordination of competitive

seniority (39a, 114a, 156a-157a). Although these errors were squarely presented as questions 3 and 4 of the Petition, respondent simply ignores them; this tactic is understandable because the questions are of unmistakable general importance, and the decisions below in conflict with precedent in this and other courts. (See Pet. 36-42 (conflict with *Erie* and appellate decisions in accord therewith); 42-44 (conflict with *Fleetwood*). Further, in the companion case, the court below refused to effectuate strikers' statutory *Fleetwood* rights, preferring to shield a "good faith" violation. And the court below also misunderstood and misapplied *Fleetwood's* burden of proof rule. That issue (Question 2 herein) is one of law, but the Company says nothing about it, choosing instead to invoke Rule 52(a), F.R. Civ.P. (Co. Opp. pp. 12-13).

In each respect, the court's approach defeats both the contract enforcement and striker protection principles which must inform administration of Section 301. Plainly, the source of law governing construction and enforcement of strike settlement agreements must be clarified by this Court.

Respectfully submitted,

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